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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,415	12/21/2001	Rosann Marie Kaylor	16926	2521
22827	7590	08/11/2006	EXAMINER	
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			ALEXANDER, LYLE	
			ART UNIT	PAPER NUMBER
			1743	

DATE MAILED: 08/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/026,415

Applicant(s)

KAYLOR ET AL.

Examiner

Lyle A. Alexander

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 51-69 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 51-69 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 51-56 and 58-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Everhart et al. (USP 6,221,579), Everhart et al. (USP 6,180,288), WO 01/44813, Everhart et al. (USP 6,060,256), Everhart et al. (USP 6,048,623), Everhart et al. (USP 6,020,647) or Everhart et al. (USP 5,922,550) in view of Douglas et al. (USP 5,948,695).

All of these references were cited by Applicants'. All of these references teach a diffraction based assay device with a polymer that is coated with a metal film and multiple binding sites for the analyte of interest on the film. All of these references teach a channel that contains the sample and maintains contact with the film which has been read on the claimed "fluid guide". All of these references teach means that transfers the sample to film which has been read on the claimed "wicking agent". Finally, all of these references teach use of electromagnetic radiation sources to generate a diffraction pattern and subsequent analysis.

These references are silent to how the sample is applied and in particular to the claimed "fluidic guide" and means for venting.

Douglas et al. teach a similar device that employs a different method of analysis. However, Douglas et al. teach a capillary tube(2) and vents(8,9) that supply sample to a wicking agent(4). Column 3 teaches the capillary tube(2) is advantageous because it facilitates easy sample collection and consistently collects the same volume of sample.

The vents are advantageous because they minimize back pressure allowing the sample to be collected more quickly into tube(2) and minimize sample volume collection inconsistencies from trapped air in tube(2).

It would have been within the skill of the art to modify Everhart et al. (USP 6,221,579), Everhart et al. (USP 6,180,288), WO 01/44813, Everhart et al. (USP 6,060,256), Everhart et al. (USP 6,048,623), Everhart et al. (USP 6,020,647) or Everhart et al. (USP 5,922,550) in view of Douglas et al. and use the taught capillary tube(2) and vents(8,9) to gain the above advantages.

Claim 57 is rejected under 35 U.S.C. 103(a) as being unpatentable over Everhart et al. (USP 6,221,579), Everhart et al. (USP 6,180,288), WO 01/44813, Everhart et al. (USP 6,060,256), Everhart et al. (USP 6,048,623), Everhart et al. (USP 6,020,647) or Everhart et al. (USP 5,922,550) as applied to claims 51-56 and 58-69 above, and further in view of Moors (USP 3,598,180).

See Everhart et al. (USP 6,221,579), Everhart et al. (USP 6,180,288), WO 01/44813, Everhart et al. (USP 6,060,256), Everhart et al. (USP 6,048,623), Everhart et al. (USP 6,020,647) or Everhart et al. (USP 5,922,550) in view of Douglas et al. supra.

These references are silent to the claimed opening of the device as "beveled".

Moors teach in column 25 lines 6+ a beveled opening for a fluid receiving channel is advantageous because it provides the largest possible cross-sectional area and shortest length for the vapor without hindering the liquid flow. A large receiving area is desirable because it is easier for the user to place the sample in the channel.

It would have been within the skill of the art to modify Everhart et al. (USP 6,221,579), Everhart et al. (USP 6,180,288), WO 01/44813, Everhart et al. (USP 6,060,256), Everhart et al. (USP 6,048,623), Everhart et al. (USP 6,020,647) or Everhart et al. (USP 5,922,550) in view of Moors, and use a beveled opening, to gain the above advantages.

***Response to Arguments***

Applicant's arguments with respect to claims 51-69 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A. Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lyle A Alexander  
Primary Examiner  
Art Unit 1743

